

AMERICAN SAMOA NOTARY PUBLIC HANDBOOK



Secretary of American Samoa

Notary Public

2008



Secretary of American Samoa

September 2008

Dear Citizen of American Samoa:

Thank you for your interest in joining a group of professionals who provide invaluable public services for our government, business, legal, and financial community.

The Notary Act of 2007 (Public Law 30-18 as amended by Public Law 30-82) becomes effective on October 29, 2008 and requires all notaries of American Samoa to complete a course and pass the exam on notary laws, procedures and ethics.

The *American Samoa Notary Public Handbook* contains the laws and procedures regarding notaries public in American Samoa and was compiled to prepare you for the notary public examination. As a notary you will also be provided with *The Notary Public Code of Professional Responsibility* as part of your required materials for the course. Once you receive your commission, you should always have both resources with you at all times to enable you to perform your duties with confidence. Both guides, as well as additional information, are available on the American Samoa Government website at www.americansamoa.gov and clicking on Secretary of American Samoa.

Your role as notary public is to ensure the integrity of important transactions of commerce and government. On behalf of the people of American Samoa, I thank you for your interest in performing a very important public service for the territory.

Sincerely

Faoa A. Sunia

Secretary of American Samoa

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AN ACT TO MODERNIZE THE NOTARY PUBLIC OFFICE BY ESTABLISHING RULES, PROCEDURES, GUIDING PRINCIPLES, DEFINING DUTIES AND RESPONSIBILITIES, AND PROVIDING FOR SANCTIONS FOR NOTARIES PUBLIC OF THE TERRITORY OF AMERICAN SAMOA, AND TO ASSURE THE INTEGRITY OF DOCUMENTS ESSENTIAL TO COMMERCIAL AND LEGAL TRANSACTIONS BY CREATING A NEW CHAPTER 03, TITLE 31, IN THE AMERICAN SAMOA CODE ANNOTATED; AND BY AMENDING TITLE 4, SECTION 4.0604, A.S.C.A.

Preamble and Guiding Principles

WHEREAS, the Notary shall, as a government officer and public servant, serve all of the public in an honest, fair and unbiased manner; and

WHEREAS, the Notary shall act as an impartial witness and not profit or gain from any document or transaction requiring a notarial act, apart from the fee allowed by statute; and

WHEREAS, the Notary shall require the presence of each signer and oath-taker in order to carefully screen each for identity and willingness, and to observe that each appears aware of the significance of the transaction requiring a notarial act; and

WHEREAS, the Notary shall not execute a false or incomplete certificate, nor be involved with any document or transaction that is false, deceptive or fraudulent; and

WHEREAS, the Notary shall give precedence to the rules of law over the dictates or expectations of any person or entity; and

WHEREAS, the Notary shall act as a ministerial officer and not provide unauthorized advice or services; and

WHEREAS, the Notary shall affix a seal on every notarized document and not allow this universally recognized symbol of office to be used by another or in an endorsement or promotion; and

WHEREAS, the Notary shall record every notarial act in a bound journal or other secure recording device and safeguard it as an important public record; and

WHEREAS, the Notary shall respect the privacy of each signer and not divulge or use personal or proprietary information disclosed during execution of a notarial act for other than an official purpose; and

WHEREAS, the Notary shall seek instructions on notarization, and keep current on the laws, practices and requirements of the notarial office.

AMENDMENTS

Section 2. Title 4, Section 4.0604, ASCA, is amended to read as follows:

“4.0604 Jurisdiction of the Administrative Law Judge

The Office of the Administrative Law Judge shall have jurisdiction to conduct hearings and issue decisions, with regards to the following matters:

(a) Claims for workmen’s compensation in accordance with the procedures set forth in sections 32.0635 to and including 32.0646. All other authorities of the workmen’s compensation commission under chapter 06 of Title 32 A.S.C.A., shall remain with the commission.

(b) Controversies, grievances and administrative appeals by government employees on matters pertaining to employment, including matters pertaining to hiring, termination, suspension and discipline. The responsibilities formerly held by the personnel advisory board pursuant to section 7.0102, with regards to the said matters are now transferred to the office of administrative law judge. All other functions of the personnel advisory board not otherwise affected herein shall remain with the board.

(c) Appeals from the decision of the immigration board in all matters except decisions with respect to deportation of aliens as provided in section 41.0208 - 41.0212. Appeal of deportation decisions of the board shall be made to the appellate division of the High Court as provided by law. All other decisions of the board may be appealed to the administrative law judge.

(d) All disputes and controversies pertaining to claims for unpaid or improperly paid wages and hours pursuant to chapter 03 of Title 32 A.S.C.A., except in matters relating to the rulemaking authority of the wage and hour board.

(e) All appeals filed by applicants and notaries public pursuant to the Notary Act of 2007, Title 31, Chapter 03, sections 31.0309(e) and 31.0358(c), A.S.C.A.

~~(e)~~ (f) To take appeals of procurement officer’s final decision in a procurement bidding dispute as described in section 10.0282 A.S.C.A. The Governor’s authority to appoint a three member board to hear disputes of matters pertaining to procurement disputes is hereby repealed.

~~(f)~~(g) Any other contested case, grievance or controversy that agencies, offices and departments of the government may be referred to the Office of the Administrative Law Judge for disposition providing that the Office of Administrative Law Judge has jurisdiction over such matter.

~~(g)~~ (h) All appeals from administrative rulings or decisions of any administrative agency, except those matters specifically exempted herein or by statute, of a department, office, agency, commission, board or committee of the Executive branch or the American Samoa Government, shall first be made to the Office of the Administrative Law Judge. Decisions of the Administrative may be appealed to the appellate division of the High Court of American Samoa.

~~(h)~~ (i) in cases involving the administrative suspension of drivers licenses pursuant to Title 22, chapter 06 of this Code, the Administrative Law Judge shall have jurisdiction to hold hearings and issue decisions regarding the suspension of drivers licenses for refusal to submit to testing pursuant to A.S.C.A., 22.0601 et. seq.”

Section 1. Section 31.0337 is amended to read as follows:

“31.0337 Inspection, copying and disposal.

(a) In the notary’s presence, any person may inspect an entry in the official journal of the notarial acts during regular business hours, but only if:

(1) the person’s identity is personally known to the notary or proven through satisfactory evidence;

(2) the person affixes a signature in the journal in a separate, dated entry;

(3) the person specifies the month, year, type of document, and name of the principal for the notarial act or acts sought; and

(4) the person is shown only the entry or entries specified.

(b) If the notary has a reasonable and explainable belief that a person bears a criminal or harmful intent in requesting information from the notary’s journal, the notary may deny access to any entry or entries.

(c) The journal may be examined without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the Secretary.

(d) Upon complying with a request under subsection (a), the notary shall provide a copy of a specified entry or entries in the journal at a cost of not more than \$2.00 per copy; other entries on the same page shall be masked. If a certified copy of an entry in a bound book is requested, the additional cost is as specified in section 31.0330.

(e) A notary shall safeguard the journal and all other notarial records and surrender or destroy them only by rule of law, by court order, or at the direction of the Secretary.

(f) When not in use, the journal shall be kept in a secure area under the exclusive control of the notary, and shall not be used by any other notary nor surrendered to an employer upon termination of employment.

(g) Within 10 days after the journal is stolen, lost, destroyed, damaged, or otherwise rendered unusable or unreadable as a record of notarial acts, the notary, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy or number of any pertinent police report.

(h) Upon resignation, revocation, or expiration of a notary commission, or death of the notary, the journal and notarial records shall be delivered to the Office of the Secretary of American Samoa in accordance with ~~chapter 10~~ sections 31.0351 to 31.0355."

Section 2. Section 31.0366 is deleted in its entirety as follows:

~~"31.0366 Additional sanctions not precluded.~~

~~The sanctions of this chapter do not preclude other sanctions and remedies provided by law."~~

Section 3. Effective Date.

This Act and these amendments shall be effective on the same effective date designated for the Notary Act of 2007.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

Section 1. There is created a new Chapter 03, Title 31, A.S.C.A., which reads:

“Chapter 03”

NOTARY PUBLIC

Part I: General Provisions and Definitions

31.0301 Short Title.

This Act may be cited as the Notary Act of 2007.

31.0302 Purposes.

This Act shall be construed and applied to advance its underlying purposes, which are:

- (1) to promote, serve, and protect the public interest;
- (2) to simplify, clarify, and modernize the law governing notaries;
- (3) to foster ethical conduct among notaries;
- (4) to enhance cross-border recognition of notarial acts;
- (5) to integrate procedures for traditional notarial acts; and
- (6) to unify Territorial and state notarial laws.

31.0303 Interpretation.

In this Act, unless the context otherwise requires, words in the singular include the plural, and words in the plural include the singular.

31.0304 Prospective Effect.

The existing seal, length of commission term, and liability of current notaries commissioned before this Act’s effective date may not be invalidated, modified, or terminated by this Act, but those notaries shall comply with this Act in performing notarizations and in applying for new commissions.

31.0305 Severability Clause.

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

31.0306 Effective Date.

This Act shall take effect 180 days from the day it is signed by the Governor.

31.0307 Definitions

For purposes of this Title:

(1) "Acknowledgment" means a notarial act in which an individual at a single time and place:

(a) appears in person before the notary and presents a document;

(b) is personally known to the notary or identified by the notary through satisfactory evidence; and

(c) indicates to the notary that the signature on the document was voluntarily affixed by the individual for purposes stated within the document and, if applicable, that the individual had due authority to sign in a particular representative capacity.

(2) "Affirmation" means a notarial act, or part thereof, which is legally equivalent to an oath and in which an individual at a single time and place:

(a) appears in person before the notary;

(b) is personally known to the notary or identified by the notary through satisfactory evidence; and

(c) makes a vow of truthfulness or fidelity on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear."

(3) "Commission" means both to empower to perform notarial acts and the written evidence of authority to perform those acts.

(4) "Copy certification" means a notarial act in which a notary:

(a) is presented with a document that is neither a vital record, a public record, nor publicly recordable;

(b) copies or supervises the copying of the document using a photographic or electronic copying process;

(c) compares the document to the copy; and

(d) determines that the copy is accurate and complete.

(5) "Credible witness" an honest, reliable, and impartial person who personally knows an individual appearing before a notary and takes an oath or affirmation from the notary to vouch for that individual's identity.

(6) “Journal of notarial acts” and “journal” mean a device for creating and preserving a chronological record of notarizations performed by a notary.

(7) “Jurat” means a notarial act in which an individual at a single time and place:

(a) appears in person before the notary and presents a document;

(b) is personally known to the notary or identified by the notary through satisfactory evidence;

(c) signs the document in the presence of the notary; and

(d) takes an oath or affirmation from the notary vouching for the truthfulness or accuracy of the signed document.

(8) “Notarial act” and “notarization” mean any act that a notary is empowered to perform under this Act.

(9) “Notarial certificate” and “certificate” mean the part of, or attachment to, a notarized document that is completed by the notary, bears the notary’s signature and seal, and states the facts attested by the notary in a particular notarization.

(10) “Notary public” and “notary” mean any person commissioned to perform official acts under this Act.

(11) “Oath” means a notarial act, or part thereof, which is legally equivalent to an affirmation and in which an individual at a single time and place:

(a) appears in person before the notary;

(b) is personally known to the notary or identified by the notary through satisfactory evidence; and

(c) makes a vow of truthfulness or fidelity on penalty of perjury while invoking a deity or using any form of the word “swear.”

(12) “Official misconduct” means:

(a) a notary’s performance of any act prohibited, or failure to perform any act mandated, by this Act or by any other law in connection with a notarial act by the notary; or

(b) a notary’s performance of an official act in a manner found by the Secretary of American Samoa to be negligent or against the public interest.

(13) “Appears in person before the notary” means that the principal and the notary are physically close enough to see, hear, communicate with, and give identification documents to each other.

(14) “Personal knowledge of identity” and “personally knows” mean familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

(15) “Principal” means:

(a) a person whose signature is notarized; or

(b) a person, other than a credible witness, taking an oath or affirmation from the notary.

(16) “Regular place of work or business” means a stationary office or workplace where one spends all or some of one’s working or business hours.

(17) “Satisfactory evidence of identity” means identification of an individual based on:

(a) at least one current document issued by a federal, state, territorial, or tribal government agency bearing the photographic image of the individual’s face and signature and a physical description of the individual, though a properly stamped passport without a physical description is acceptable; or

(b) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual, or of 2 credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the notary documentary identification as described in subparagraph (a) of this subsection.

(18) “Seal” means a device for affixing on a paper document an image containing a notary’s name, jurisdiction, commission expiration date, and other information related to the notary’s commission.

(19) “Secretary” means the Secretary of American Samoa.

(20) “Signature witnessing” means a notarial act in which an individual at a single time and place:

(a) appears in person before the notary and presents a document;

(b) is personally known to the notary or identified by the notary through satisfactory evidence; and

(c) signs the document in the presence of the notary.

(21) “United States National” means anyone born in the Territory of American Samoa, or a citizen of the United States, and owes permanent allegiance to the United States.

(22) “Verification of fact” means a notarial act in which a notary reviews public or vital records to ascertain or confirm any of the following facts regarding a person:

- (a) date of birth or death;
- (b) name of parent, offspring, or sibling;
- (c) date of marriage or divorce; or
- (d) name of marital partner.

31.0308 Authority to adopt rules.

The Secretary shall adopt administrative rules pursuant to A.S.C.A. 4.1001 et seq. to implement the provisions of this Title.

Part II: Notary Public

31.0309 Qualifications

(a) Except as provided in Subsection (c), the Secretary shall issue a notary commission to any qualified person who submits an application in accordance with this Article.

(b) A person qualified for a notary commission shall:

(1) be at least 18 years of age;

(2) have a regular place of work or business in the Territory of American Samoa, as defined in Section 31.0307(16);

(3) reside legally in the Territory of American Samoa;

(4) read and write English;

(5) pass a course of instruction requiring a written examination under Section 31.0316;
and

(6) submit fingerprints to allow a criminal background check.

(c) The Secretary may deny an application based on:

(1) submission of an official application containing material misstatement or omission of fact;

(2) revocation, suspension, restriction, or denial of a notarial commission or professional license by this or any other state or territory or nation, but in no case may a commission be issued to the applicant within 5 years after such disciplinary action; or

(3) an official finding that the applicant had engaged in official misconduct as defined in Section 31.0307(12), whether or not disciplinary action resulted.

(d) The Secretary shall deny an application based on:

- (1) the applicant's conviction or plea of admission or nolo contendere for any felony;
- (2) the applicant's conviction or plea of admission or nolo contendere for any misdemeanor involving dishonesty or moral turpitude;
- (3) a finding or admission of liability against the applicant in a civil lawsuit based on the applicant's deceit;

(e) Denial of an application may be appealed by filing in proper form with the Office of the Administrative Law Judge within 30 days after denial, except that an applicant may not appeal when the Secretary within 5 years prior to the application has:

- (1) denied or revoked for disciplinary reasons any previous application, commission, or license of the applicant; or
- (2) made a finding under Section 31.0358(d) that grounds for revocation of the applicant's commission existed.

31.0310 Jurisdiction and Term

A person commissioned as a notary may perform notarial acts within the Territory of American Samoa for a term of 2 years, unless the commission is earlier revoked under Section 31.0358 or resigned under Section 31.0353.

31.0311 Bond

(a) A notary commission shall not be issued until a bond of \$500 has been deposited with the Office of the Secretary who shall hold it in a special trust account, separate from that account which is provided for in Section 31.0318(b), with payment of said bond funds to any person conditioned upon the notary's misconduct as defined in Section 31.0307(12).

(b) If a notary bond has been exhausted by claims paid out, the Secretary shall suspend the notary's commission until:

- (1) a new bond is obtained by the notary; and
- (2) the notary's fitness to serve the remainder of the commission term is determined by the Secretary.

31.0312 Commissioning Documents

Upon issuing a notary commission, the Secretary shall provide to the notary:

- (1) a commission document stating the commission serial number and starting and ending dates; and
- (2) a Certificate of Authorization to Purchase a Notary Seal stating the commission serial number.

31.0313 Recommissioning

A current or former notary applying for a new notary commission shall submit a new completed application and comply anew with all of the provisions of sections 31.0309 to 31.0319.

31.0314 Application Materials

Every application for a notary commission shall be made on paper forms determined by the Secretary and include:

- (1) a statement of the applicant's personal qualifications, as described in Section 31.0315;
- (2) a certificate evidencing successful completion of a course of instruction, as described in section 31.0316;
- (3) a notarized declaration of the applicant, as described in section 31.0317;
- (4) a full set of fingerprints of the applicant;
- (5) such other information as the Secretary may deem appropriate; and
- (6) an application fee, as specified in section 31.0318.

31.0315 Statement of Personal Qualifications.

The application for a notary commission shall state or include, at least:

- (1) the applicant's date of birth;
- (2) the applicant's residence address and telephone number;
- (3) the applicant's business address and telephone number, the business mailing address, if different, and the name of the applicant's employer, if any;
- (4) a declaration that the applicant is a citizen or national of the United States or proof of the applicant's legal residency in the Territory of American Samoa;
- (5) a declaration that the applicant can read and write English;
- (6) all issuance, denials, revocations, suspensions, restrictions, and resignations of a notarial commission, professional license or public office involving the applicant in this or any other territory, state or nation;
- (7) all criminal convictions of the applicant, including any pleas of admission or nolo contendere, in this or any other territory or state or nation; and

(8) all claims pending or disposed against a notary bond held by the applicant, and all civil findings or admissions of fault or liability regarding the applicant's activities as a notary, in this or any other territory, state or nation.

31.0316 Course and Examination

(a) Every applicant for a notary commission shall take, within the 3 months preceding application, a course of instruction of at least 3 hours approved by the Secretary, and pass a written examination of this course.

(b) The content of the course and the basis for the written examination shall be notarial laws, procedures, and ethics.

31.0317 Notarized Declaration

Every applicant for a notary commission shall sign the following declaration in the presence of a notary of this Territory:

Declaration of Applicant

I, _____ (name of applicant), solemnly swear or affirm under penalty of perjury that the personal information in this application is true, complete, and correct; that I understand the official duties and responsibilities of a notary public in the Territory of American Samoa, as explained in the course of instruction I have taken; and that I will perform, to the best of my ability, all notarial acts in accordance with the law.

_____(signature of applicant)

(notarial certificate as specified in section 31.0343)

31.0318 Application Fee - Funds to be Utilized by the Secretary

(a) Every applicant for a notary commission shall pay to the American Samoa Government a non-refundable application fee of \$100.00.

(b) All funds collected from application fees, vendor permit fees as provided for in Section 31.0341, and such other fees as the Secretary may promulgate by rules when necessary, but not including those fees allowable under section 31.0330, shall be placed in a special account to be utilized by the Secretary for purposes related to the training, testing and commissioning of notaries public, as provided for in this chapter. All funds not expended at the end of each financial year shall be deposited in the Government's general fund and subject to further appropriation by the legislature.

(c) The Secretary shall keep a detailed accounting record regarding the use of such funds and shall submit a report to the Treasurer of American Samoa at the end of each financial year.

31.0319 Confidentiality

Information required by Section 31.0315(7) shall be used by the Secretary and designated government employees only for the purpose of performing official duties under this Act and shall not be disclosed to any person other than a government agent acting in an official capacity and duly authorized to obtain such information, a person authorized by court order, or to the applicant or such individual's duly authorized agent.

31.0320 Powers and Prohibitions

(a) A notary who is a United States National is empowered to perform the following notarial acts:

- (1) acknowledgments;
- (2) oaths and affirmations;
- (3) jurats;
- (4) signature witnessings;
- (5) copy certifications.

(b) A notary who is not a United States National is empowered only to perform the following notarial acts:

- (1) acknowledgments;
- (2) signature witnessings; and
- (3) copy certifications.

(c) A notary shall not perform a notarial act if the principal:

- (1) is not in the notary's presence at the time of notarization;
- (2) is not personally known to the notary or identified by the notary through satisfactory evidence;
- (3) shows a demeanor which causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act; or
- (4) in the notary's judgment, is not acting of his or her own free will.

(d) A notary may certify the affixation of a signature by mark on a document presented for notarization if:

- (1) the mark is affixed in the presence of the notary and of 2 witnesses unaffected by the document;

(2) both witnesses sign their own names beside the mark;

(3) the notary writes below the mark: "Mark affixed by (name of signer of mark) in presence of (names and addresses of witnesses) and undersigned notary under section 31.0320(d) of the Notarial Act of 2007"; and

(4) the notary notarizes the signature by mark through an acknowledgment, jurat, or signature witnessing.

(e) A notary may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:

(1) the person directs the notary to do so in the presence of 2 witnesses unaffected by the document;

(2) the notary signs the person's name in the presence of the person and the witnesses;

(3) both witnesses sign their own names beside the signature;

(4) the notary writes below the signature: "Signature affixed by notary in the presence of (names and addresses of person and 2 witnesses) under section 31.0320(e) of the Notarial Act of 2007"; and

(5) the notary notarizes the signature through an acknowledgment, jurat, or signature witnessing.

31.0321 Disqualifications

(a) A notary is disqualified from performing a notarial act if the notary:

(1) is a party to or named in the document that is to be notarized;

(2) will receive as a direct or indirect result any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in section 31.0330(a);

(3) is a spouse, domestic partner, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives; or

(4) is an attorney who has prepared, explained, or recommended to the principal the document that is to be notarized.

(b) Notwithstanding subsection (a)(2), a notary may collect a fee for an assignment as a signing agent if payment of that fee is not contingent upon the signing of any document.

31.0322 Refusal to Notarize

(a) A notary shall not refuse to perform a notarial act based on the principal's race, advanced age, gender, sexual orientation, religion, national origin, health or disability, or status as a non-client or non-customer of the notary or the notary's employer.

(b) A notary shall perform any notarial act described in section 31.0320(a) or (b) of this chapter for any person requesting such an act who tenders the appropriate fee specified in section 31.0330(a), unless:

(1) the notary knows or has good reason to believe that the notarial act or the associated transaction is unlawful;

(2) the act is prohibited under section 31.0320(c);

(3) the number of notarial acts requested practicably precludes completion of all acts at once, in which case the notary shall arrange for later completion of the remaining acts; or

(c) A notary may but is not required to perform a notarial act outside the notary's regular workplace or business hours.

31.0323 Avoidance of Influence

(a) A notary shall not influence a person either to enter into or avoid a transaction involving a notarial act by the notary, except that the notary may advise against a transaction if section 31.0322(b)(1) applies.

(b) A notary has neither the duty nor the authority to investigate, ascertain, or attest the lawfulness, propriety, accuracy, or truthfulness of a document or transaction involving a notarial act.

31.0324 False Certificate

(a) A notary shall not execute a certificate containing information known or believed by the notary to be false.

(b) A notary shall not affix an official signature or seal on a notarial certificate that is incomplete.

(c) A notary shall not provide or send a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary's presence.

31.0325 Improper Documents

(a) A notary shall not notarize a signature:

(1) on a blank or incomplete document; or

(2) on a document without notarial certificate wording.

(b) A notary shall neither certify nor authenticate a photograph.

31.0326 Intent to Deceive

A notary shall not perform any official action with the intent to deceive or defraud.

31.0327 Testimonials

A notary shall not use the official notary title or seal to endorse, promote, denounce, or oppose any product, service, contest, candidate, or other offering.

31.0328 Unauthorized Practice of Law

(a) If notarial certificate wording is not provided or indicated for a document, a non-attorney notary shall not determine the type of notarial act or certificate to be used.

(b) A non-attorney notary shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.

(c) This section does not preclude a notary who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.

(d) A notary shall not claim to have powers, qualifications, rights, or privileges that the office of a notary does not provide, including the power to counsel on immigration matters.

(e) A non-attorney notary who advertises notarial services in a language other than English shall include in the advertisement, notice, letterhead, or sign the following, prominently displayed in the same language:

(1) the statement: "I am not an attorney and have no authority to give advice on immigration or other legal matters"; and

(2) the fees for notarial acts specified in section 31.0330(a).

(f) A notary may not use the term "notario publico" or any equivalent non-English term in any business card, advertisement, notice, or sign.

Part III: Fees and Notary Journal

31.0329 Imposition and Waiver of Fees

(a) For performing a notarial act, a notary may charge the maximum fee specified in section 31.0330, charge less than the maximum fee, or waive the fee.

(b) A notary shall not discriminatorily condition the fee for a notarial act on the attributes of the principal as delineated in section 31.0322(a), though a notary may waive or reduce fees for humanitarian or charitable reasons.

31.0330 Fees for Notarial Acts

(a) The maximum fees that may be charged by a notary for notarial acts are:

- (1) for acknowledgments, \$10.00 per signature;
- (2) for oaths or affirmations without a signature, \$20.00 per person;
- (3) for jurats, \$10.00 per signature;
- (4) for signature witnessings, \$10.00 per signature;
- (5) for certified copies, \$5.00 per page certified with a minimum total charge of \$10.00;

(b) A notary may charge a travel fee when traveling to perform a notarial act if:

(1) the notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and

(2) the notary explains to the person requesting the notarial act that the travel fee is both separate from the notarial fee in subsection (a) and neither specified nor mandated by law.

31.0331 Payment Prior to Act

(a) A notary may require payment of any fees specified in section 31.0330 prior to performance of a notarial act.

(b) Any fees paid to a notary prior to performance of a notarial act are non-refundable if:

(1) the act was completed; or

(2) in the case of travel fees paid in compliance with section 31.0330(b), the act was not completed for reasons stated in section 31.0322(b)(1) or (2) after the notary had traveled to meet the principal.

31.0332 Fees of Employee Notary

(a) An employer may prohibit an employee who is a notary from charging for notarial acts performed on the employer's time, but shall not condition imposition of a fee on attributes of the principal as described in section 31.0322(a).

(b) A private employer shall not require an employee who is a notary to surrender or share fees charged for any notarial acts.

(c) A governmental employer who has absorbed an employee's costs in becoming or operating as a notary shall require any fees collected for notarial acts performed on the

employer's time either to be waived or surrendered to the employer to support public programs.

31.0333 Notice of Fees

Notaries who charge for their notarial services shall conspicuously display in their places of business, or present to each principal outside their places of business, an English-language or Samoan-language schedule of fees for notarial acts, as specified in section 31.0330(a). No part of any notarial fee schedule shall be printed in smaller than 10-point type.

31.0334 Format

(a) A notary shall keep, maintain, protect, and provide for lawful inspection a chronological official journal of notarial acts that is a permanently bound book with numbered pages.

(b) A notary shall keep no more than one active journal at the same time.

31.0335 Entries

(a) For every notarial act, the notary shall record in the journal at the time of notarization at least the following:

(1) the date and time of day of the notarial act;

(2) the type of notarial act;

(3) the type, title, or a description of the document or proceeding;

(4) the signature, printed name, and address of each principal;

(5) the evidence of identity of each principal, in the form of either: a statement that the person is "personally known" to the notary; a notation of the type of identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration; or the signature, printed name and address of each credible witness swearing or affirming to the person's identity, and, for credible witness swearing or affirming to the person's identity, and, for credible witnesses who are not personally known to the notary, a description of identification documents relied on by the notary;

(6) the fee, if any, charged for the notarial act.

(b) A notary shall not record a social security or credit card number in the journal, unless such number is used as a serial or identification number for a identification document relied upon by the notary for identification purposes.

(c) A notary shall record in the journal the circumstances for not completing a notarial act.

(d) As required in section 31.0337(a), a notary shall record in the journal the circumstances of any request to inspect or copy an entry in the journal, including the requester's name, address, signature, and evidence of identity. The reasons for refusal to allow inspection or copying of a journal entry shall also be recorded.

31.0336 Signatures

At the time of notarization, the notary's journal must be signed, as applicable, by each:

- (1) principal;
- (2) credible witness swearing or affirming to the identity of a principal; and
- (3) witness to a signature by mark or to a signing by the notary on behalf of a person physically unable to sign.

31.0337 Inspection, Copying, and Disposal

(a) In the notary's presence, any person may inspect an entry in the official journal of notarial acts during regular business hours, but only if:

- (1) the person's identity is personally known to the notary or proven through satisfactory evidence;
- (2) the person affixes a signature in the journal in a separate, dated entry;
- (3) the person specifies the month, year, type of document, and name of the principal for the notarial act or acts sought; and
- (4) the person is shown only the entry or entries specified.

(b) If the notary has a reasonable and explainable belief that a person bears a criminal or harmful intent in requesting information from the notary's journal, the notary may deny access to any entry or entries.

(c) The journal may be examined without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the Secretary.

(d) Upon complying with a request under subsection (a), the notary shall provide a copy of a specified entry or entries in the journal at a cost of not more than \$2.00 per copy; other entries on the same page shall be masked. If a certified copy of an entry in a bound book is requested, the additional cost is as specified in section 31.0330.

(e) A notary shall safeguard the journal and all other notarial records and surrender or destroy them only by rule of law, by court order, or at the direction of the Secretary.

(f) When not in use, the journal shall be kept in a secure area under the exclusive control of the notary, and shall not be used by any other notary nor surrendered to an employer upon termination of employment.

(g) Within 10 days after the journal is stolen, lost, destroyed, damaged, or otherwise rendered unusable or unreadable as a record of notarial acts, the notary, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy or number of any pertinent police report.

(h) Upon resignation, revocation, or expiration of a notary commission, or death of the notary, the journal and notarial records shall be delivered to the Office of the Secretary of American Samoa in accordance with chapter 10.

Part IV: Evidence of Authenticity

31.0338 Official Signature

In notarizing a paper document, a notary shall:

(1) sign by hand on the notarial certificate exactly and only the name indicated on the notary's commission;

(2) not sign using a facsimile stamp or an electronic or other printing method; and

(3) affix the official signature only at the time the notarial act is performed.

31.0339 Official Seal

(a) A notary shall keep an official seal that is the exclusive property of the notary. The seal shall not be possessed or used by any other person, nor surrendered to an employer upon termination of employment.

(b) An image of the official seal shall be affixed by the notary on every paper document notarized.

(c) An image of the seal shall be affixed only at the time the notarial act is performed.

(d) When not in use, the seal shall be kept secure and accessible only to the notary.

(e) Any seal image affixed by an adhesive label shall bear a preprinted sequential number which shall be recorded in the journal of notarial acts for its respective notarization.

(f) Within 10 days after the seal of a notary is stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image, the notary, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy or number of any pertinent police report. Upon receipt

of such notice the Secretary shall issue to the notary a new Certificate of Authorization to Purchase a Notary Seal, which shall be presented to a seal vendor in accordance with section 31.0341.

(g) As soon as reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be destroyed or defaced so that it may not be misused.

31.0340 Seal Image

(a) Near the notary's official signature on the notarial certificate of a paper document, the notary shall affix a sharp, legible, permanent, and photographically reproducible image of the official seal that shall include the following elements:

(1) the notary's name exactly as indicated on the commission;

(2) the serial number of the notary's commission;

(3) the words "Notary Public" and "Territory of American Samoa" and "My commission expires (commission expiration date)";

(4) the notary's business address; and

(5) a border in a rectangular shape no larger than 1 inch by 2 inches, surrounding the required words.

(b) Illegible information within a seal impression may be typed or printed legibly by the notary adjacent to but not within the impression.

(c) An embossed seal impression that is not photographically reproducible may be used in addition to but not in lieu of the seal described in subsection (a).

31.0341 Obtaining and Providing a Seal

(a) In order to sell or manufacture notary seals, a vendor or manufacturer shall apply for a permit from the Secretary, who shall charge \$50.00 for issuance of this permit and maintain a controlled-access telephone number or internet site to allow vendors and manufacturers to confirm the business mailing address of any notary in American Samoa.

(b) A vendor or manufacturer shall not provide a notary seal to a purchaser claiming to be a notary, unless the purchaser presents a photocopy of his or her notary commission and a Certificate of Authorization to Purchase a Notary Seal from the Secretary, the purchaser appears in person, and the vendor or manufacturer identifies this individual as the person named in the commission and the Certificate of Authorization, through either personal knowledge or satisfactory evidence of identity.

(c) A vendor or manufacturer shall release a notary seal only to the purchaser, having appeared in person, presenting a photocopy of her notary commission, her Certificate of

Authorization to Purchase a Notary Seal from the Secretary, and satisfactory evidence of identity.

(d) For each Certificate of Authorization to Purchase a Notary Seal, a vendor or manufacturer shall make or sell one and only one seal, plus, if requested by the person presenting the Certificate, one and only one embossing seal.

(e) After manufacturing or providing a notary seal or seals, the vendor shall affix an image of all seals on the Certificate of Authorization to Purchase a Notary Seal and send the completed Certificate to the Secretary, retaining a copy of the Certificate and the Commission for two years.

(f) A notary obtaining a seal or seals as a result of a name or business address change shall present a copy of the Confirmation of Notary's Name or Address Change from the Secretary in accordance with sections 31.0351 and 31.0352.

(g) A vendor or manufacturer who fails to comply with this section is guilty of a class B misdemeanor, punishable upon conviction by imprisonment of not more than six months and/or a fine not exceeding \$500.00. Such conviction shall not preclude the civil liability of the vendor to parties injured by the vendor's failure to comply with this section.

31.0342 General Acknowledgment

A notary shall use a certificate in substantially the following form in notarizing the signature or mark of persons acknowledging for themselves or as partners, corporate officers, attorneys in fact, or in other representative capacities:

Territory of American Samoa

County of _____

On this _____ day of _____, 20____, before me, the undersigned notary, personally appeared _____ (name of document signer),

(personally known to me) (proved to me through identification documents allowed by law, which were _____,) (proved to me on the oath or affirmation of _____, who is personally known to me and stated to me that (he) (she) personally knows the document signer and is unaffected by the document,) (proved to me on the oath or affirmation of _____ and _____, whose identities have been proven to me through documents allowed by law and who have stated to me that they personally know the document signer and are unaffected by the document,) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose(.)

(as partner for _____, a partnership.)

(as _____ for _____, a corporation)

(as attorney in fact for _____, the principal.)

(as _____ for _____, (a)(the) _____.)

(official signature and seal of notary)

31.0343 Jurat

A notary shall use a jurat certificate in substantially the following form in notarizing a signature or mark on an affidavit or other sworn or affirmed written declaration:

Territory of American Samoa

County of _____

On this _____ day of _____, 20_____, before me, the undersigned notary, personally appeared _____ (name of document signer),

(personally known to me) (proved to me through identification documents allowed by law, which were _____,) (proved to me on the oath or affirmation of _____, who is personally known to me and stated to me that (he) (she) personally knows the document signer and is unaffected by the document,)

(proved to me on the oath or affirmation of _____ and _____, whose identities have been proved to me through documents allowed by law and who have stated to me that they personally know the document signer and are unaffected by the document,) to be the person who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to be best of (his)(her) knowledge and belief.

(official signature and seal of notary)

31.0344 Signature Witnessing

A notary shall use a certificate in substantially the following form in notarizing a signature or mark to confirm that it was affixed in the notary's presence without administration of an oath or affirmation:

Territory of American Samoa

County of _____

On this _____ day of _____, 20_____, before me, the undersigned notary, personally appeared _____ (name of document signer), (personally known to me) (proved to me through identification documents allowed by law, which were _____,) (proved to me on the oath or affirmation of _____, who is personally known to me and stated to me that (he)(she) personally knows the document signer and is unaffected by the document,) (proved to me on the oath or affirmation of _____ and _____, whose identities have been proven to me through documents allowed by law and who have stated to me that they personally know the document signer and are unaffected by the document,) to be the person who signed the preceding or attached document in my presence.

(official signature and seal of notary)

31.0345 Signer by Mark and Person Unable to Sign

On paper documents, certificates in sections 31.0342, 31.0343 and 31.0344 of this chapter may be used for signers by mark or persons physically unable to sign or make a mark if:

(1) for a signer by mark, the notary and 2 witnesses unaffected by the document observe the affixation of the mark, both witnesses sign their own names beside the mark, and the notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of (names and addresses of 2 witnesses) and undersigned notary under section 31.0320(d) of the Notarial Act of 2007"; or

(2) for a person physically unable to sign or make a mark, the person directs the notary to sign on his or her behalf in the presence of the person and 2 witnesses unaffected by the document, both witnesses sign their own names beside the signature, and the notary writes below the signature: "Signature affixed by notary in presence of (names and addresses of person and 2 witnesses) under section 31.0320(e) of the Notarial Act of 2007".

31.0346 Certified Copy

A notary shall use a certificate in substantially the following form in notarizing a certified copy:

Territory of American Samoa
County of _____

On this _____ day of _____, 20_____, I certify that the (preceding) (following) (attached) document is a true, exact, complete, and unaltered copy made by me of _____ (description of document),

(presented to me by the documents custodian, _____,)

(held in my custody as a notarial record,) and that, to the best of my knowledge, the copied document is neither a vital record, a public record nor a publicly recordable document, certified copies of which may be available from an official source other than a notary.

(official signature and seal of notary)

31.0347 Forms of Evidence

On a notarized document sent to another state or nation, evidence of the authenticity of the official seal and signature of a notary of this Territory, if required, shall be in the form of:

(1) a certificate of authority from the Secretary authenticated as necessary by additional certificates from United States and/or foreign government agencies; or

(2) in the case of a notarized document to be used in a nation that has signed and ratified the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of October 5, 1961, an Apostille from the Secretary of American Samoa in the form prescribed by the Convention, with no additional authenticating certificates required.

31.0348 Certificate of Authority

(a) A certificate of authority evidencing the authenticity of the official seal and signature of a notary of this Territory shall be substantially in the following form:

Certificate of Authority for a Notarial Act

I, _____ Secretary of American Samoa, certify that _____ (name of notary), the person named in the seal and signature on the attached document, was a Notary Public for the Territory of American Samoa, and authorized to act as such at the time of the document's notarization.

To verify this Certificate of Authority for a Notarial Act, I have affixed below my signature and seal of office this _____ day of _____, 20_____.

(signature and seal of Secretary of American Samoa)

31.0349 Apostille

An Apostille prescribed by the Hague Convention, as cited in 28 U.S.C.A. in the annotations to Rule 44 of the Rules of Civil Procedure, shall be in the form of a square with sides at least 9 centimeters long and contain exactly the following wording:

APOSTILLE

(Convention de la Haye du 5 octobre 1961)

1. Country:_____

This public document has been

2. signed by _____

3. acting in the capacity of _____

4. bears the seal/stamp of _____

CERTIFIED

5. at _____

6. the _____

7. by _____

8. No. _____

9. Seal/Stamp

10. Signature:

31.0350 Fees

The Secretary may charge:

(1) for issuing a certificate of authority, \$25.00; and

(2) for issuing an Apostille, \$25.00.

Part V: Change of Status, Sanctions and Liability

31.0351 Change of Address

(a) Within 10 days after the change of a notary's residence, business, or mailing address, the notary shall send to the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice of the change, giving both old and new addresses.

(b) If the business address is changed, the notary shall not notarize until:

(1) the notice described in subsection (a) has been delivered or transmitted;

(2) a Confirmation of Notary's Name or Address Change has been received from the Secretary; and

(3) a new seal bearing the new business address has been obtained.

31.0352 Change of Name

(a) Within 10 days after the change of notary's name by court order or marriage, the notary shall send to the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice of the change, giving both former and new names, with a copy of any official authorization for such change.

(b) A notary with a new name shall continue to use the former name in performing notarial acts until the following steps have been completed, at which point the notary shall use the new name:

(1) the notice described in subsection (a) has been delivered or transmitted;

(2) a Confirmation of Notary's Name or Address Change has been received from the Secretary; and

(3) a new seal bearing the new name exactly as in the Confirmation has been obtained.

31.0353 Resignation

(a) A notary who resigns his or her commission shall send to the Secretary by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice indicating the effective date of resignation.

(b) Notaries who cease to reside in or to maintain a regular place of work or business in this Territory, or who become permanently unable to perform their notarial duties, shall resign their commissions.

31.0354 Disposition of Seal and Journal

(a) Except as provided in subsection (b), when a notary commission expires or is resigned or revoked, the notary shall:

(1) as soon as reasonably practicable, destroy or deface all notary seals so that they may not be misused; and

(2) within 30 days after the effective date of resignation, revocation, or expiration, send to the Office of the Secretary of American Samoa by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, the notarial journal and records, in accordance with the requirements of the same office.

(b) A former notary who intends to apply for a new commission and whose previous commission or application was not revoked or denied by this Territory, need not deliver the journal and records within 30 days after commission expiration, but must do so within 3 months after expiration unless recommissioned within that period.

31.0355 Death of Notary

If a notary dies during the term of commission or before fulfilling the obligations stipulated in Section 31.0354, the notary's personal representative shall:

(1) notify the Secretary of the death in writing;

(2) as soon as reasonably practicable, destroy or deface all notary seals so that they may not be misused; and

(3) within 30 days after death, send to the Office of the Secretary of American Samoa, care of the Office of the Governor by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, the notary's journal of notarial acts and any other notarial records, in accordance with requirements of the same office.

31.0356 Liability of Notary and Employer

(a) A notary is liable to any person for all damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization.

(b) An employer of a notary is liable to any person for all damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in performing a notarization during the course of employment, if the employer directed, expected, encouraged, approved, or tolerated the notary's negligence, violation of law, or official misconduct either in the particular transaction or, impliedly, by the employer's previous action in at least one similar transaction involving any notary employed by the employer.

(c) An employer of a notary is liable to the notary for all damages recovered from the notary as a result of any violation of law by the notary that was coerced by threat of the employer, if the threat, such as of demotion or dismissal, was made in reference to the

particular notarization or, impliedly, by the employer's previous action in at least one similar transaction involving any notary employed by the employer. In addition, the employer is liable to the notary for damages caused the notary by demotion, dismissal, or other action resulting from the notary's refusal to engage in violation of law or official misconduct.

(d) Notwithstanding any other provision of this Act, for the purposes of this section "negligence" shall not include any good-faith determination made by the notary pursuant to the obligations imposed by Section 31.0320(c)(3) or (4).

31.0357 Proximate Cause

Recovery of damages against a notary or employer does not require that the notary's negligence, violation of law, or official misconduct be either the sole or principal proximate cause of the damages.

31.0358 Revocation

(a) The Secretary may revoke a notary commission for any ground on which an application for a commission may be denied under Section 31.0309(c) and (d).

(b) The Secretary shall revoke the commission of any notary who fails:

(1) to maintain a residence or a regular place of work or business in the Territory of American Samoa; and

(2) to maintain status as a legal resident of American Samoa.

(c) Prior to revocation of a notary commission, the Secretary shall inform the notary of the basis for the revocation and that the revocation takes effect on a particular date unless a proper appeal is filed with the Administrative Law Judge before that date.

(d) Resignation or expiration of a notary commission does not terminate or preclude an investigation into the notary's conduct by the Secretary, who may pursue the investigation to a conclusion, whereupon it shall be made a matter of public record whether or not the finding would have been grounds for revocation.

31.0359 Other Remedial Actions for Misconduct

(a) The Secretary may deliver a written Official Warning to Cease Misconduct to any notary whose actions are judged to be official misconduct under Section 31.0307(12).

(b) The Secretary may seek a court injunction to prevent a person from violating any provision of this Act.

31.0360 Publications of Sanctions and Remedial Actions

The Secretary shall regularly publish a list of persons whose commissions have been revoked by the Secretary or whose actions as a notary were the subject of a court injunction or Official Warning to Cease Misconduct.

31.0361 Criminal Sanctions

(a) In performing a notarial act, a notary is guilty of a class D felony, punishable upon conviction by a fine not exceeding \$5,000 or imprisonment of up to five years, or both, for knowingly:

- (1) failing to require the presence of a principal at the time of the notarial act;
- (2) failing to identify a principal through personal knowledge or satisfactory evidence; or
- (3) executing a false notarial certificate under Section 31.0324.

(b) A notary who knowingly performs or fails to perform any other act prohibited or mandated respectively by this Act may be guilty of a class A misdemeanor, punishable upon conviction by a fine not exceeding \$1,000 or imprisonment of up to one year, or both.

31.0362 Additional Remedies and Sanctions Not Precluded

The remedies and sanctions of this chapter do not preclude other remedies and sanctions provided by law.

31.0363 Impersonation

Any person not a notary who knowingly acts as or otherwise impersonates a notary is guilty of a Class D felony, punishable upon conviction by a fine of not more than \$5,000, or imprisonment for not more than five years, or both.

31.0364 Wrongful Possession

Any person who knowingly obtains, conceals, defaces, or destroys the seal, journal, or official records of a notary is guilty of a Class D felony, punishable upon conviction by a fine of not more than \$5,000, or imprisonment for not more than five years, or both.

31.0365 Improper Influence

Any person who knowingly solicits, coerces, or in any way influences a notary to commit official misconduct is guilty of a Class D felony, punishable upon conviction by a fine of not more than \$5,000, or imprisonment for not more than five years, or both.

31.0366 Additional Sanctions Not Precluded

The sanctions of this chapter do not preclude other sanctions and remedies provided by law.”

